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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/628,560	07/29/2003	Karsten Schulz	13909-132001 / 2003P00484	4776
32864 7590 07/27/2007 FISH & RICHARDSON, P.C. PO BOX 1022 MINNEAPOLIS, MN 55440-1022			EXAMINER TECKLU, ISAAC TUKU	
			ART UNIT 2192	PAPER NUMBER
			MAIL DATE 07/27/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/628,560	SCHULZ, KARSTEN	
	Examiner	Art Unit	
	Isaac T. Tecklu	2192	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 May 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 and 12-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10 and 12-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This action is in response to the amendment filled on 05/17/2007.
2. Claims 1, 3-5, 10, 12, 16 and 19 have been amended.
3. Claim 11 has been cancelled.

Claim Rejections - 35 USC § 101

4. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

5. Claims 1-9 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Claim 1 is non-statutory as being "A workflow model" without being supported by hardware such as tangible computer storage or execution engine, which would enable one skill in the art to construe that the workflow is built from tangible product, for example by a computer's compiler, to carry out any functionality being conveyed from the claim. Thus, a workflow model is software *per se* and therefore is not being tangibly embodied in a manner as to be executable.

(a) data structures and/or program per se not claimed as embodied in computer-readable media are descriptive material per se and are not statutory because they are not capable of causing functional change in the computer. See, e.g., Warmerdam, 33 F.3d at 1361, 31 USPQ2d at 1760 (claim to a data structure per se held nonstatutory). Such claimed data structures do not define any structural and functional interrelationships between the data structure and other claimed aspects of the invention which permit the data structure's functionality to be realized. In contrast, a claimed computer-readable medium encoded with a data structure defines structural and functional interrelationships between the data structure and the computer software and

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hardware components which permit the data structure's functionality to be realized, and is thus statutory.

Claims 2-9 are rejected for failing to cure the deficiencies of the above rejected non-statutory claim 1 above. See MPEP 2106.01(I).

Double Patenting

6. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

7. Claims 1, 10 and 16 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting over claims of copending Application No. 10/628,564(hereinafter '564')

Although the conflicting claims are not identical, they are not patentably distinct from each other because of the following observations.

Following are but a few examples as to how the certain claims from the instant invention and from the above copending application are conflicting with each other.

As per claims 1, 10 and 16, copending '564' claim 3 also recites a workflow, first matrix including first vertices, wherein values of the first vertices are determined based on

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interdependencies between the actual tasks, workflow view representing an abstraction of the workflow, the workflow view including virtual tasks that each correspond to at least one of the actual tasks, a second matrix including second vertices, wherein values of the second vertices are determined based on virtual dependencies between the virtual tasks and an aggregate workflow compiled from the workflow and the workflow view. Even though '564' claims recite linking the first virtual task to the first plurality of tasks such that (bounding) a virtual execution of the abstracted workflow (virtual task) corresponds (associated) to an actual execution of the workflow (actual task) and combining the first plurality of tasks comprises combining the second plurality of tasks into a second virtual task within the abstracted workflow and linking the first virtual task to the first plurality of tasks comprises linking the second virtual task to the second plurality of tasks such that a virtual execution of the abstracted workflow corresponds to an actual execution of the workflow, one skilled in the art would recognize that the aggregated workflow including one or more aggregating routing task pairs, each routing task pair bounding a virtual task and an associated actual task such that initiation of the virtual task is based on a status of the associated actual task such that initiation of the virtual task is based on a status of the associated actual task is derived from the very same defined linking the first virtual task of the first plurality of tasks such that a virtual execution of the abstracted workflow corresponds to an actual execution of the workflow, combining the first plurality of tasks comprises combining the second plurality of tasks into a second virtual task within the abstracted workflow and linking the second virtual task to a second plurality of tasks such that a virtual execution of abstracted workflow corresponds to an actual execution of the workflow recited in the instant and the copending claims. This is an obviousness-type of anticipatory double patenting because the recited subject matter is not identical in language, the species claimed subject matter reads on, in an anticipatory matter—the subject matter not patentably distinct – the subject matter of the instant claims.

Conclusion


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8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mulubrhan T. Tecklu whose telephone number is 5712727957. The examiner can normally be reached on M-F 7:00A - 3:30P.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tuan Q. Dam can be reached on (571) 272-3695. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Isaac Tecklu
Art Unit 2192



TUAN DAM
SUPERVISORY PATENT EXAMINER